THE HON'BLE SRI. JUSTICE GODA RAGHURAM

W.P.No. 8095 of 2006

26-04-2006

Between:-

Kondapalli Ramana and another.

Petitioners

And

The Commissioner of Endowments, Endowments Department, Hyderabad and another.

Respondents

THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.No. 8095 of 2006

Oral order:

Heard the learned counsel for the petitioners Smt. P. Radhika, represented by Sri Laxminarayana Reddy and the learned Government Pleader for Endowments appearing for the respondents.

The writ petition is filed assailing the auction notice dated 15-04-2006 published in the daily press on 19-04-2006 notifying an auction and calling for bids, *inter alia* for the sale of Prasadams and safeguarding of devotees chappals in the premises of Sri Boyakonda Gangamma Devasthanam, Diguvepalli, Chowdepalli mandal, Chittoor district (for short 'Devasthanam').

Earlier, the 2nd respondent issued an auction notification on 04-03-2006 for grant of license for sale of prasadams, maintenance of a chappal stand and other related items. A number of bids were received. The two petitioners herein bid for the sale of prasadams and maintenance of the chappal stand, respectively. The auction was held on 20-03-2006 and the petitioners were found to be the highest bidders for the items they bid i.e., the 1st petitioner for Rs. 04,25,000-

00 and the 2nd petitioner for Rs. 01,35,000-00. The petitioners have also deposited the requisite amounts and pleaded to have been informed that they will be permitted to conduct business from 01-05-2006 to 30-04-2007 pursuant to their success at the auction process.

While so, the 2nd respondent issued the impugned fresh auction notification on 15-04-2006 re-notifying the selfsame items for which the petitioners were found to be the highest bidders and had deposited the bid amounts under a receipt, to the tune of Rs.04,25,000-00 and Rs.01,35,000-00 respectively, vide receipts dated 20-03-2006 issued by the 2nd respondent.

It is the admitted factual scenario and legal position too that despite being the highest bidders and provisionally identified by the 2nd respondent for award of the license, the petitioners' entitlement to be the licensees would fructify only on an approval granted by the 1st respondent in accordance with the extant legal environment governed by the Andhra Pradesh Charitable & Hindu Religious Institutions & Endowments Immoveable Properties and other rights (other than Agricultural lands) Leases and Licenses Rules, 2003 (for short 'the Rules').

Presumably, after identification of the petitioners as the highest bidders, the 2nd respondent would have recommended to the 1st respondent the cases of the petitioners for grant of approval as is required by the Rules. Rule 12 of the Rules neither enacts a deemed approval clause nor does it stipulate that after the lapse of a specified period, permission is deemed to be rejected by the competent authority. In these circumstances and in the context of the legal position above, the petitioners' legitimate expectation to grant approval on being the highest bidders would have to be considered and expeditiously. Before any decision is taken by the 1st respondent it would be improper and illegal to re-notify for auction and to call for bids in respect of those items, which are still under consideration and are pending final approval of the competent authority.

The entire auction process earlier held pursuant to the auction notification dated 04-03-2006 cannot be given up by an implication, that the notifying of a fresh auction must signal the rejection by the competent authority of the bids.

Being the highest bidders, indisputably the petitioners have a legitimate expectation and a legal right as a corollary thereto that the competent authority would communicate a reasoned decision, if approval is to be withheld or denied. Without such a decision and communication thereof to the petitioners, the entirety of the administrative action by the respondents would be arbitrary and unsustainable. Further, a procedure whereby a statutory authority is not even required to record reasons for grant or denial of approval and communication of such a decision to the affected parties, would introduce an element of unfairness in the procedure and would also lead to deleterious administrative practices such as nepotism. Good governance practices require that reasons must be recorded and that the competent authority must take a decision as to the declining of approval or cancellation of the entire earlier auction process and must communicate the reasons for refusal to accord permission to the highest bidders, who were recommended for consideration by the 2nd respondent.

It now transpires, as submitted by the learned Government Pleader for Endowments, that subsequent to the impugned fresh notification issued by the 2nd respondent on 15-04-2006 and after filing of the writ petition on 20-04-2006, the 1st respondent has woken up to the need to take a decision and has passed an order, by proceedings dated 22-04-2006 *inter alia* rejecting the grant of license in respect of the right to sale prasadams and for safeguarding chappals of devotees in the temple premises.

In passing, it requires to be stated that the executive agencies are granted a raft of powers. Such grant of powers is for regulating social conduct for public welfare. These are not the powers for the benefit of the incumbent. Such powers must be responsibly exercised with due

deference to the statutory context and as a public responsibility.

The petitioners and other bidders are not subjects of the 1st respondent. They are under our constitutional order the ultimate masters and the 1st respondent exercising power, authorities and responsibilities, is a subject of the laws enacted on the ultimate authority of citizens. Recognition of such fundamental basis of executive power in a Republic warrants greater commitment to the rule of law as by statutory rules ordained. In this, the respondents have been found remiss on a regular basis. This case is another illustration of this malaise.

For the aforesaid reasons, the writ petition is allowed. The auction notification issued by the 2nd respondent dated 15-04-2006 is set aside. As the petitioners have suffered legal injury by the violation of the statutory rules by the respondents; the petitioners shall be entitled to costs of Rs.500-00 (Rupees five hundred only) each. The 1st respondent is directed to furnish a copy of the order dated 22-04-2006 to each of the petitioners, on receipt whereof the petitioners are entitled to pursue remedies there against, if so desired.

Nothing in this order shall be considered as an expression by this court on the validity of the order of the 1st respondent dated 22-04-2006. Consequent on the cancellation of the earlier tender process, the petitioners are also entitled to the refund of the amounts paid by them, pursuant to earlier notification dated 04-03-2006, within seven (7) days from the date of receipt of a copy of this order.

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GODA RAGHURAM, J

Dated:26-04-2006

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